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IN THE
Supreme Court of the United States

OCTOBER TERM, 1984

IN RE

ZARKO SEKEREZ,

Attorney-Petitioner.

On Petition For Writ Of Certiorari
To The Supreme Court Of Indiana

BRIEF IN REPLY TO BRIEF OF RESPONDENT
INDIANA SUPREME COURT DISCIPLINARY
COMMISSION IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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In response to Petitioner's argument that "preponderance of the evidence" is not a constitutionally sufficient standard upon which to base factual findings supporting disbarment of an attorney, Respondent merely quotes that part of the Indiana Supreme Court's

Disbarment Order in which the court stated its intention to review the evidence under a "clear and convincing" standard. Respondent neglects to mention that the court then proceeded to "adopt and accept as its own the findings of fact submitted by the hearing officer" - findings measured by the preponderance of the evidence. (Petition, pp. 9, 12-13, 17-19.) The court's statement of its intent to apply a standard more demanding than a mere preponderance does not erase the fact that it never did so and Respondent's claim that the Indiana Supreme Court "in fact applied [the clear and convincing measure] in Petitioner's case below" (Respondent's Brief, p. 4) is fatally inaccurate.

Respondent's protests about the clarity of Rule 23, Sec. 15(c) overlook

the fact that, plainly, the Indiana Supreme Court did not find it so unambiguous. "Sufficient" is not synonymous with "all" in anyone's lexicon and the court's use of the word "sufficient" in its October 25, 1982 Order not only demonstrates the vagueness of the Rule but, coming as it did from the highest Indiana court, also perpetuated the problem. Respondent's statement (Brief, p. 5) that "Petitioner filed only a partial record consisting of the testimony of his witnesses" is simply inaccurate. (See, Petition, pp. 15-18.)

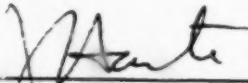
Respondent's argument that the Indiana Supreme Court's October 25, 1982 interpretation of the Rule is irrelevant because it came after Petitioner filed his petition for review is fallacious for two reasons. First, as reviewed above,

the court's Order itself demonstrated the Rule's vagueness - to separate the Order from the Rule on the basis of timing avoids the real issue. Second, taking Respondent's argument literally would mean that no matter what, an attorney challenging a hearing officer's disbarment findings and recommendation would be strictly limited to the material he submitted with his original petition. Such a procedural straight-jacket is neither indicated by the Rule nor consistent with the gravity of the issue. Petitioner did in fact submit additional evidence with his Reply Brief (see, Petition, pp. 16-17, 24) in an attempt to honor the Rule and the court's interpretation of it. At the time, there is no suggestion that anyone had the temerity to suggest that this additional

material could not be considered.

The flaws in Respondent's argument for the denial of Certiorari only serve to illustrate the injustices of proceedings by which the State of Indiana deprived petitioner of his law license. Petitioner respectfully submits that these injustices deserve review.

Respectully submitted,



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